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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-H-&A-

DATE: SEPT. 28, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a law firm, seeks to permanently employ the Beneficiary as a staff attorney under the second preference immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent residence.

The Director, Texas Service Center, initially approved the petition. The Director subsequently revoked the approval of the petition on the grounds that: (1) the Petitioner did not establish its continuing ability to pay the proffered wage of the job offered; and (2) no *bona fide* job offer existed at the time the labor certification application was filed.

The matter is now before us on appeal. The Petitioner has submitted a brief and additional documentation and asserts that the evidence of record establishes its continuing ability to pay the proffered wage as well as the *bona fides* of the original job offer. Upon *de novo* review, we will dismiss the appeal.

I. PROCEDURAL HISTORY

The instant petition, Form I-140, was filed by [redacted] on June 14, 2006.[1] As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, which was filed with the Department of Labor (DOL) on August 26, 2003, and certified by the DOL (labor certification) on October 12, 2005.[2] The labor certification stated that the proffered wage for the job offered was $110,000 per year (Part A, box 12, of the Form ETA 750). The labor certification also stated that the job required a J.D. in law and a Texas law license or the ability to obtain such a license through reciprocity, and that no training or experience was required (Part A, boxes 14 and 15, of the Form ETA 750).

[1] According to bank account statements and federal tax returns in the record, the Petitioner changed its name to [redacted] with a new federal employer identification number, at the beginning of 2011.

[2] The Form ETA 750 indicated that [redacted] was formerly [redacted]

As evidence in support of its claimed ability to pay the proffered wage, the Petitioner submitted copies of federal income tax returns, IRS Forms 1120, for the years 2004 and 2005, as well as a 2003 Schedule C (Form 1040), Profit or Loss from Business, for [redacted] As evidence of the Beneficiary's educational and licensure credentials, the Petitioner submitted copies of the Beneficiary's degree of Juris Doctor from the [redacted] in [redacted] Michigan, dated September 19, 1998, and the Beneficiary's law license from the Supreme Court of Texas, dated August 2, 2000. The Director approved the petition on July 15, 2006.

On November 3, 2014, however, after the issuance of a notice of intent to revoke (NOIR) and a response by the Petitioner with additional documentation, the Director issued a notice revoking the approval of the petition. As grounds for revocation the Director found that the Petitioner did not establish its continuing ability to pay the proffered wage from August 26, 2003 (the priority date of the petition) to February 13, 2007 (the date the Beneficiary ported to another employer)[4] and the *bona fides* of the job offer at the time the labor certification application was filed with the DOL (August 26, 2003).

On the ability to pay issue, the Director found that the Petitioner did not pay the Beneficiary the proffered wage during any year of her employment. The Director reviewed the Petitioner's tax returns for the years 2003-2007 and concluded, based on the Petitioner's net income or net current assets for each of those years in conjunction with the amounts assertedly paid to the Beneficiary, that the Petitioner had the ability to pay the proffered wage in 2004 and 2005, but not in the other years. The Director noted that the Petitioner had submitted monthly bank account statements or summaries over the time period of May 2007 to December 2012, but determined that they could not be considered since they postdated the Beneficiary's porting to another employer.

As for the *bona fides* of the job offer, the Director noted that the Petitioner claimed to have employed the Beneficiary from January 2, 2003 to December 29, 2006. After reviewing the evidence of record, the Director cited conflicting documentation with regard to 2003 and concluded that the Petitioner did not establish that it employed the Beneficiary that year. As for the years 2004-2006, the Director found that the evidence established the Beneficiary's employment by the Petitioner during that time period. However, the Director pointed out that the Beneficiary was paid only 30% of the proffered wage in 2004, 36% in 2005, and 55% in 2006 (based on the wage figures

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[3] Unlike the 2004 and 2005 tax returns, the 2003 Schedule C left blank the space for "Employer ID no. (EIN), if any."

[4] Section 204(j) of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), 8 U.S.C. § 1154(j), provides that a Form I-140 petition "shall remain valid" with respect to a new job offer for purposes of the beneficiary's application for adjustment of status so long as (1) the application for adjustment of status based upon the initial visa petition was pending for more than 180 days and (2) the new job offer from the new employer is for a "same or similar" job. The petition must have been "valid" to begin with if it is to "remain valid with respect to a new job." *Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010). To be considered valid in harmony with related provisions and with the statute as a whole, the petition must have been filed for an alien who is entitled to the requested classification and that petition must have been approved by a U.S. Citizenship and Immigration Services (USCIS) officer pursuant to his or her authority under the Act. An unadjudicated immigrant visa petition is not made "valid" merely through the act of filing the petition with USCIS or through the passage of 180 days. *Id.*

in his Forms W-2, Wage and Tax Statements), and concluded that these figures called into question the *bona fides* of the job offer. Finally, the Director referred to other evidence submitted by the Petitioner – including a list of employees and their job descriptions as well as the amended recruitment report and associated job postings and advertisements – but determined that this documentation, in view of the evidentiary inconsistencies previously discussed, was insufficient to establish the Petitioner's intent to permanently employ the Beneficiary in the job offered.

The Petitioner filed its appeal on November 20, 2014,[5] which was supplemented by a brief and additional documentation addressing the issues of the Petitioner's ability to pay the proffered wage and the *bona fides* of the job offer.

II. LAW AND ANALYSIS

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the Director that the petition was approved in error may be good and sufficient cause for revoking the approval. *See Matter of Estime, 19 I&N Dec. 450, 451 (BIA 1987) Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988). For the reasons discussed hereinafter, we find that there was good and sufficient cause for the Director to revoke the approval of the petition on the grounds discussed in his decision. In addition, we find that the record is unclear as to the identity of the petitioning entity. Accordingly, we will dismiss the appeal.

A. Identity of the Petitioner

At the outset we note that the Form ETA 750 – which was filed on August 26, 2003, and established the priority date of the subsequent Form I-140 immigrant petition – identified the prospective employer as "formerly (Part B, box 8, of the Form ETA 750). It appears for at least the first half of 2003 was in business under the name of as evidenced in a letter from to U.S. Citizenship and Immigration Services (USCIS) on the letterhead of dated June 27, 2003, stating that the Beneficiary was employed by the firm as a licensed attorney. Not until March 17, 2004, was formally incorporated, as indicated on its federal income tax return (IRS Form 1120) for that year. As late as April 2004, during the labor certification process, a job announcement was posted and an amended recruitment report was sent to the DOL using the letterhead, though both of these documents stated that the business was now known as The 2003 Schedule C (Form 1040), previously mentioned, refers to yet a different entity – the law office of – which had no Employer Identification Number (EIN) and may have bridged the gap between

[5] The appeal, Form I-290B, was filed on the Petitioner's behalf by the law firm of On May 23, 2016, however, the Texas Service Center received a letter from the law firm, now called indicating that the firm no longer represents the Petitioner in this proceeding.

and In any future proceedings with USCIS the Petitioner should submit evidence that is the legal successor-in-interest to and, if applicable, the unincorporated law office of as well as the date(s) the legal succession occurred.

Furthermore, while the Form I-140 petition was filed in the name of in 2006, the Petitioner has changed its name since then to with a different EIN from the one it had when the petition was filed. The record includes copies of the Petitioner's IRS Forms 941 from the first quarter of 2010 through the fourth quarter of 2012, which show that the Petitioner's name change occurred at the beginning of 2011 and that its EIN changed at that time from to In any future proceedings with USCIS the Petitioner should submit evidence that is the legal successor-in-interest to

A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the appellant is a different entity than the petitioner/labor certification employer, it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). An appellant may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. In this case the Petitioner must establish the full chain of successorship – from to the law office of to to – in order to continuing relying on the instant labor certification in support of the immigrant petition.

B. Petitioner's Ability to Pay the Proffered Wage

The regulation at 8 C.F.R. § 204.5(g)(2) provides, in pertinent part, as follows:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records may be submitted by the petitioner or requested by the Service.

Thus, the Petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the labor certification application was accepted for processing by

any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). In this case, the priority date is August 26, 2003.

The Petitioner must establish that its job offer to the Beneficiary is a realistic one. Because the filing of a Form ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the certified Form ETA 750, the Petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the Beneficiary obtains lawful permanent residence. The Petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, U.S. Citizenship and Immigration Services (USCIS) requires the Petitioner to demonstrate financial resources sufficient to pay the Beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will also be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the Petitioner's ability to pay the proffered wage, USCIS first examines whether the Beneficiary was employed and paid by the Petitioner during the period following the priority date. If the Petitioner establishes by documentary evidence that it employed the Beneficiary at a salary equal to or greater than the proffered wage, the evidence is considered *prima facie* proof of the Petitioner's ability to pay the proffered wage.

In this case, the Petitioner claims that it employed the Beneficiary from January 2, 2003 to December 29, 2006, and has submitted copies of the Forms W-2, Wage and Tax Statements, assertedly issued to the Beneficiary for each of those years. It has also submitted copies of its Employer's Quarterly Reports, Forms C-3, to the Texas Workforce Commission, from the second quarter of 2004 through the fourth quarter of 2005 which listed the Beneficiary as an employee and recorded her quarterly pay, as well as some pay statements assertedly issued to the Beneficiary from in 2003 and in 2004, which are consistent with the data provided on the Forms W-2 for those years. According to this documentation, the Beneficiary was employed by and received compensation from the Petitioner of $39,996 in 2003, $33,330 in 2004, $40,000 in 2005, and $60,000 in 2006. With respect to 2003, however, we note that the $33,996 recorded on the Form W-2 conflicts with the Beneficiary's subsequent Social Security Statement, issued in 2010, which listed her taxed social security earnings as "0" in 2003.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.* In any future proceedings with USCIS the Petitioner should provide additional evidence and/or an explanation for this inconsistency.

Even if we did accept all of the figures on the Forms W-2, they were well below the proffered wage of $110,000 per year. Thus, the Petitioner has not established its ability to pay the proffered wage

from the priority date of August 26, 2003, onward based on the wages assertedly paid to the Beneficiary. The Petitioner must establish its ability to pay the difference between wages paid to the Beneficiary and the proffered wage in each relevant year.

According to the 2003 Schedule C (Form 1040) submitted by the Petitioner, the business was organized at that time as a sole proprietorship – a business in which one person operates the business in his or her personal capacity. *See* Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual federal tax return (IRS Form 1040) each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *See Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In its NOIR, issued on November 20, 2013, the Director requested the Petitioner to submit an IRS (Internal Revenue Service) Transcript of its 2003 individual income tax return with all accompanying schedules, along with a statement of the sole proprietor's monthly household expenses, 11 categories of which were listed. The Director also stated that if the sole proprietor wished to use personal assets to establish its ability to pay the proffered wage, appropriate evidence such as bank statements, checking or savings account statements, and stock account statements should be submitted. In its response to the NOIR, however, the Petitioner did not submit any of the requested documentation. Instead of a complete copy of its 2003 IRS Form 1040 and accompanying schedules, the record contains only the Schedule C (Form 1040), Profit or Loss from Business, that was submitted with the petition. In the revocation notice the Director stated that without the complete IRS Form 1040 and a list of personal monthly expenses, USCIS could not properly analyze the Petitioner's continuing ability to pay the proffered wage beginning on the priority date as a sole proprietorship. The Director concluded that the Petitioner had not established its ability to pay the proffered wage in 2003.

On appeal the Petitioner still has not submitted a copy of personal monthly expenses for in 2003, and indicates that no further tax records are available for 2003. The Petitioner asserts that its net profit of $154,400 in 2003, as recorded on line 31 of its Schedule C, demonstrates its ability to cover the $70,010 difference between the proffered wage of $110,000 and the $39,990[6] assertedly paid to the Beneficiary in 2003. Without a complete copy of the Petitioner's 2003 IRS Form 1040, however, and a list of monthly personal expenses that year, it is not possible to determine how much money, if any, was actually available to cover the shortfall of more than $70,000 between the proffered wage and the amount the Beneficiary was assertedly paid in

[6] The figure is $39,996 on the 2003 Form W-2, which is in question as previously discussed

2003. In this connection, the Petitioner must also resolve the discrepancy between the Beneficiary's 2003 Form W-2 and her 2010 Social Security Statement, which indicates that the Beneficiary had no taxed social security earnings in 2003. Thus, Petitioner has not established its ability to pay the full proffered wage in 2003.

As previously indicated, the record shows that incorporated his business on March 17, 2004 as For 2004 and succeeding years the firm filed its federal income tax returns on IRS Form 1120, U.S. Corporation Income Tax Return.

If the Petitioner does not establish that it has paid the Beneficiary an amount at least equal to the proffered wage from the priority date onward, USCIS will examine the net income and net current assets figures entered on the Petitioner's federal income tax return(s). If either of these figures equals or exceeds the proffered wage or the difference between the proffered wage and the amount paid to the Beneficiary in a given year, the Petitioner would be considered able to pay the proffered wage during that year. There is ample judicial precedent for determining a petitioner's ability to pay the proffered wage based on its federal income tax returns. *See e.g. Elatos Restaurant Corp. v. Sava*, 632 F.Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Togatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)).

The record includes copies of the Petitioner's IRS Forms 1120 for the years 2004-2008. On these forms net income (or loss) is recorded on page 1, line 28, while net current assets (or liabilities) are determined in Schedule L as the difference between current assets, entered on lines 1-6, and current liabilities, entered on lines 16-18. As shown in the tax returns, the Petitioner's net income and net current assets were as follows in the years 2004-2008:

Year	Net Income	Net Current Assets
2004	$ 81,579	-$ 27,158
2005	$162,994	-$ 9,181
2006	$ 556	$ 20,181
2007	$ 6,866	$ 28,585
2008	$ 463	$ 29,849

In 2004 the Petitioner's net income of $81,579 plus the $33,330 it assertedly paid to the Beneficiary that year add up to $114,909, which exceeded the proffered wage of $110,000. For 2005 the Petitioner's net income alone exceeded the proffered wage. Based on the evidence of record, therefore, we determine that the Petitioner has established its ability to pay the proffered wage in 2004 and 2005.

For 2006, however, neither the Petitioner's net income nor its net current assets were sufficient to cover the $50,000 difference between the proffered wage of $110,000 and the $60,000 assertedly paid to the Beneficiary that year. For 2007 and 2008, when the Beneficiary was no longer employed by the Petitioner, neither net income nor net current assets were sufficient to pay the proffered wage of $110,000. Thus, the Petitioner cannot establish its ability to pay the full proffered wage in the

years 2006-2008 based on its net income or net current assets in those years. For 2009 and subsequent years no federal income tax returns have been submitted by the Petitioner.

In the revocation notice the Director incorrectly determined that the bank account records submitted by the Petitioner could not be considered because they covered a time period – May 2007 to December 2012 – which postdated the Beneficiary's porting to another employer in February 2007. Since the Petitioner maintains that it still intends to employ the Beneficiary pursuant to the instant petition, it must establish its continuing ability to pay the proffered wage from the priority date onward, which includes 2007 and all the years following. Therefore, bank account records from 2007 to 2012 are not excluded, though they are not one of the required types of evidence – annual reports, federal tax returns, or audited financial statements – specified in 8 C.F.R. § 204.5(g)(2). We also note that the evidentiary value of a bank account cannot be fully analyzed in a given year without the Petitioner's corresponding federal income tax return indicating whether the cash was already accounted for on Schedule L. While the Petitioner has submitted copies of its IRS Form 1120 for 2007 and 2008, it has not done so for the years 2009-2012, or any subsequent year.

The bank records submitted in this case do not support the Petitioner's claim that the account balances were sufficient to pay the proffered wage in at least some of the years from 2007 to 2012. The record shows that the Petitioner had one account with in the years 2007-2010 (account number in the name of and a different account in the years 2011-2012 (account number in the name of dba In 2007 the monthly balances ranged from a low of -$2,192.94 in July to $8,405.43 in December. In 2008 the monthly balances ranged from a high of $24,462.54 in September to a low of $546.96 in November, and closed with a year-end balance of $5,648.69. In 2009 the monthly balances ranged from a low of $2,374.91 in June to a high of $32,600.95 in October, and closed with a year-end balance of $4,627.99. In 2010 the monthly balances ranged from a low of $2,008.81 in September to a high of $12,253.13 in December. In 2011 the monthly balances ranged from a high of $38,903.97 in January to a low of $2,196.08 in August, and closed with a year-end balance of $3,919.30. In 2012 the monthly balances ranged from a high of $18,313.38 in May to a low of $975.01 in July, and closed with a year-end balance of $8,530.70. In none of these years were the account balances sufficient to pay the monthly portion of the proffered wage on a continuing basis. Nor does the Petitioner take into account that the bank balance would have dropped each month that it was accessed to pay some or all of the proffered wage, which could have totally depleted the account in short order. Moreover, as previously discussed, without the corresponding tax returns for all the years in question, we cannot determine whether the funds on the bank statements represented additional assets that were not already accounted for year by year on Schedule L of the Petitioner's IRS Forms 1120. We conclude, therefore, that the bank account with is not persuasive evidence of the Petitioner's ability to pay the proffered wage in the years 2007-2012.

USCIS may also consider the totality of the Petitioner's circumstances, including the overall magnitude of its business activities, in determining the Petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612. USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of its net income and net current assets.

USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the petitioner's reputation within its industry, the overall number of employees, whether the beneficiary is replacing a former employee or an outsourced service, the amount of compensation paid to officers, the occurrence of any uncharacteristic business expenditures or losses, and any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In this case, the record indicates that has operated a legal practice in one form or another since 1992. Six employees were listed in the Employer's Quarterly Reports filed with the Texas Workforce Commission from mid-2004 through the end of 2005, but only two employees were claimed on the instant petition filed in June 2006. The Petitioner claims that its advertising investments of $4,176 in 2004, $14,681 in 2005, $15,532 in 2006, and $9,553 in 2007, demonstrate that the firm was intent on expanding in those years. There is no evidence in the record, however, that the firm has grown substantially, if at all, since then. The Petitioner cites the figures in its tax returns for salaries and wages paid – which rose from $127,338 in 2006, to $156,883 in 2007, to $251,491 in 2008 – as evidence of its employees on payroll in those years, but does not explain how these figures demonstrate its ability to pay the proffered wage of the job offered to the instant Beneficiary in those years. For the years 2010-2012 the record includes copies of the Petitioner's IRS Forms 941, Employer's Quarterly Federal Tax Returns, which recorded "wages, tips, and other compensation" to employees totaling $349,461.00 in 2010, $312,336.86 in 2011, and $232,046.50 in 2012. Thus, payments to employees declined from 2010 to 2012. In 2010 the Petitioner was still known as and the Form 941 indicated "0" employees each quarter.[7] In the next two years, as the quarterly returns listed employee totals ranging from 7 to 8 in 2011 and from 4 to 6 in 2012. This decline in employee totals is consistent with the decline in payments to employees from 2011 to 2012. As reflected in the foregoing documentation, the Petitioner has not demonstrated a historic pattern of growth. The Petitioner claims that it is a well-known law firm in Texas, but has submitted no evidence of any particular renown in the legal community or among the populace at large. Based on the evidence of record, we determine that the Petitioner has not established that the totality of its circumstances, as in *Sonegawa*, demonstrates its ability to pay the shortfall between the proffered wage and the wages assertedly paid to the Beneficiary in 2003 and 2006, or the full proffered wage in any year from 2007 onward.

For all of the reasons discussed above, we determine that the Petitioner, except for the years 2004 and 2005, has not established its continuing ability to pay the proffered wage of the job offered from the priority date of August 26, 2003, up to the present. On this ground also the petition cannot be approved.

[7] Considering its expenditures of nearly $350,000 for "wages, tips, and other compensation" in 2010, the Petitioner should explain in any future proceedings with the USCIS why it recorded "0" employees on all of its quarterly tax returns that year.

C. *Bona Fides* of the Job Offered

The regulation at 8 C.F.R. § 204.5(c) provides that "[a]ny United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act." Under 20 C.F.R. § 626.20(c)(8) and § 656.3, the petitioner must demonstrate that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See also* 20 C.F.R. § 656.17(l); *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987).

On appeal the Petitioner contests the Director's finding that the evidence of record does not establish the Beneficiary's employment by the Petitioner in 2003, the year the labor certification application was filed. As evidence of her employment status that year the record includes the newly submitted pay statements to the Beneficiary with dates in 2003, the previously submitted 2003 Form W-2 in the Beneficiary's name, and the Petitioner's Schedule C (Form 1040) for 2003 which lists wages paid of $39,996, the exact amount of wages recorded on the Beneficiary's 2003 Form W-2. As previously discussed, however, this evidence appears to be inconsistent with the Beneficiary's Social Security Statement, dated July 9, 2010, which listed her taxed social security earnings for each of the years 2000-2009, but entered "0" for 2003.

As previously discussed, it is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.* In any future proceedings with USCIS the Petitioner should provide additional evidence and/or an explanation for this inconsistency.

The Petitioner also contends that the Director erred in finding that no *bona fide* offer of permanent employment existed at the time the labor certification was filed based on the fact that the Beneficiary was paid only a fraction of the proffered wage in the years 2004-2006. Since the Petitioner is not required to pay the proffered wage until the Beneficiary obtains permanent resident status, we do not find that the amounts it actually paid to the Beneficiary in 2004, 2005, and 2006 indicate a lack of intent to permanently employ the Beneficiary at that time. However, there is little evidence in the record of the Petitioner's ongoing intent to employ the Beneficiary since the initial letter from dated April 5, 2006, that was submitted with the petition. The record indicates that the Beneficiary left the Petitioner's employ at the end of 2006 and ported to another employer in February 2007.

The Petitioner's federal income tax returns for the years 2006-2008 show that pay (recorded as "compensation of officers" on page 1, line 12, of the IRS Forms 1120) was $60,000 in each of those years. "Salaries and wages" paid to employees (page 1, line 13, of the IRS Forms 1120) were recorded as $127,338 in 2006 (which included the Beneficiary's $60,000), $156,883 in 2007, and $251,491 in 2008. The record does not indicate how many employees the Petitioner had in those years. The Petitioner's quarterly federal tax returns (IRS Forms 941) for the years 2010-2012 recorded "wages, tips, and other compensation" to employees of $349,461.00 in 2010,

$312,336.86 in 2011, and $232,046.50 in 2012. In 2010 the Form 941 indicated "0" employees each quarter. In 2011 the quarterly returns listed employee totals ranging from 7 to 8. In 2011 the quarterly returns listed employee totals ranging from 4 to 6. In each of these six tax years the Beneficiary's proffered wage of $110,000 per year would have represented a considerable proportion of the wages paid by the Petitioner to all of its employees, and in the years 2006-2008 it would have significantly exceeded officer's compensation. Furthermore, as the Petitioner's quarterly federal tax returns for 2010 indicate that it had 0 employees that year, the Petitioner's claim to have had a continuous, full-time bona fide job offer from the priority date onward lacks credibility. Based on the foregoing figures it does not appear realistic that the Petitioner has intended to employ the Beneficiary and pay her the full proffered wage from the priority date of August 26, 2003, up to the present.

In any further proceedings with USCIS the Petitioner must show that it has had a full-time staff attorney position available for the Beneficiary that would be paid at the proffered wage of $110,000 per year from the priority date up to the present.

III. CONCLUSION

The Petitioner has not established the chain of successorship from to the law offices of to to In addition, the Petitioner has not established its continuing ability to pay the proffered wage of the job offered from the priority date up to the present. Finally, the Petitioner has not established that a *bona fide* job opportunity has been available to the Beneficiary from the priority date up to the present.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). For the reasons discussed in this decision, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of J-H-&A-*, ID# 58959 (AAO Sept. 28, 2016)